



24647-81051
Patent

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Chris C. Miller

Serial No.: 09/762,152

Filed: February 1, 2001

For: METHOD AND APPARATUS FOR
TREATMENT OF RESPIRATORY
INFECTIONS BY NITRIC OXIDE
INHALATION

)
) Group Art Unit: 1616

)
) Examiner: Haghighatian, Mina

RECEIVED

DEC 08 2003

TECH CENTER 1600/2900

INFORMATION DISCLOSURE STATEMENT UNDER 37 CFR § 1.97(c)

Mail Stop Fee Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In accordance with 37 C.F.R. §§ 1.97 and 1.98, the items identified in the attached Information Disclosure Statement ("IDS") form PTO-1449 are brought to the attention of the Office. The items are listed on the attached form PTO-1449 and copies are enclosed for the Examiner's review and consideration in connection with the present application.

By way of additional disclosure, the owner of the present application (Pulmonox Medical Inc.) advises that it is currently engaged in a litigation against several other parties (including

CERTIFICATE OF MAILING
(37 C.F.R. §1.8a)

I hereby certify that I have a reasonable basis to expect that this paper (along with any referred to as being attached or enclosed) will be deposited with the United States Postal Service on the date shown below with sufficient postage as First Class Mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

December 1, 2003
Date of Deposit
LAI 552858v1

Melody K. Gutierrez
Name of Person Mailing Paper
[Signature]
Signature of Person Mailing Paper

09762152

12/05/2003 HDATHE1 00000163 501597

01 FC:1806 180.00 DA

INO Therapeutics, Inc. and AGA AG) in a case involving nitric oxide gas. The case is captioned, INO Therapeutics, Inc et al. v. SensorMedics Corporation et al., Civil Action No. 00-6033 (AET) and is pending before the United States District Court of New Jersey. In this litigation, INO Therapeutics and AGA AG have asserted that two patents relating to nitric oxide gas and its delivery and use, U.S. Patent Nos. 5,485,827 and 5,873,359, “would likely be infringed” by activities relating to the treatment of “respiratory infections (such as TB and ventilator-acquired pneumonia (VAP))” using “inhaled nitric oxide gas.” *See*, page 4 of Counterdefendants’ First Amended Response to Counterclaimants’ Second Set of Interrogatories Relating to Counterclaims (Nos. 19-38) (included with the present IDS submission). Therefore, in the abundance of caution, Applicant submits these two patents herewith, as well as other patents issued to Dr. Warren Zapol (one of the co-inventors of the above two patents) relating to nitric oxide. It is respectfully requested that the Examiner review and consider these patents, as well as the other materials submitted herewith, in connection with the present application.

Additionally, Applicant submits for the Examiner’s review and consideration two references by Dr. Richard Long et al that describe work related to the subject matter of the present application. Also submitted is a letter from the inventor of the present invention (Chris Miller) to Dr. Long.

The items identified in this IDS may or may not be “material” pursuant to 37 C.F.R. § 1.56. The submission thereof by Applicant is not to be construed as an admission that any such patent, publication or other information referred to therein is material or considered to be material (37 C.F.R. § 1.97(h)), or even qualifies as “prior art” under 35 U.S.C. § 102 with respect to this invention.

The IDS submitted herewith is being filed after under 37 CFR § 1.97(c), i.e., after the period specified in 37 CFR 1.97(b), and is accompanied by the fee set forth in 37 CFR 1.17(p).

The Commissioner is hereby authorized to charge \$180.00 and any fees required by the filing of these papers to Sidley Austin Brown & Wood LLP's Deposit Account No. **50-1597**.

Respectfully submitted,

SIDLEY AUSTIN BROWN & WOOD LLP

Dated: 12/1/03

By: 

Samuel N. Tiu
Reg. No. 47,997

SIDLEY AUSTIN BROWN & WOOD LLP
555 W. Fifth Street, Suite 4000
Los Angeles, CA 90013
Tel: (213) 896-6000
Fax: (213) 896-6600
Customer No. 34492



Form PTO-1449	Attorney Docket No. 24647-81051	Serial No. 09/762,152
LIST OF PATENTS AND PUBLICATIONS FOR APPLICANT(S)' INFORMATION DISCLOSURE STATEMENT	In re Patent of: Chris C. Miller	RECEIVED DEC 08 2003
(Use several sheets if necessary)	Filing Date: February 1, 2001	TECH CENTER 1600/2900 Group Art Unit: 1616

U.S. PATENT DOCUMENTS

Examiner Initials	Document No.	Date	Name	Class / Subclass	Filing Date
	6,601,580	8/5/2003	Block et al.	128/200.14	6/28/2000
	6,063,407	5/16/2000	Zapol et al.	424/718	2/16/1995
	5,904,938	5/18/1999	Zapol et al.	424/718	1/17/1997
	5,885,621	3/23/1999	Head et al.	424/718	4/4/1997
	5,873,359	2/23/1999	Zapol et al.	128/203.12	12/9/1994
	5,823,180	10/20/1998	Zapol	128/200.24	1/7/1997
	5,570,683	11/5/1996	Zapol	128/200.14	4/1/1994
	5,536,241	7/16/1996	Zapol	604/23	3/24/1993
	5,485,827	1/23/1996	Zapol et al.	128/200.14	2/10/1995
	5,396,882	3/14/1995	Zapol	128/200.14	3/11/1992

Examiner

Date Considered

Examiner: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant(s).



Form PTO-1449	Attorney Docket No. 24647-81051	Serial No. 09/762,152
LIST OF PATENTS AND PUBLICATIONS FOR APPLICANT(S)' INFORMATION DISCLOSURE STATEMENT	In re Patent of: Chris C. Miller	RECEIVED DEC 08 2003 TECH CENTER 1800/2900
(Use several sheets if necessary)	Filing Date: February 1, 2001	Group Art Unit: 1616

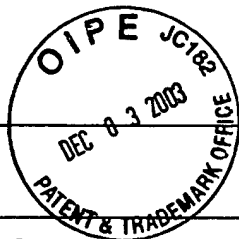
PUBLICATIONS / OTHER REFERENCES

Examiner Initials	Citation
	Long et al., "Mycobacteriocidal Action of Exogenous Nitric Oxide," <i>Antimicrobial Agents and Chemotherapy</i> , Vol. 43, No. 2, pp. 403-405 (Feb. 1999)
	Long R., et al., "Treatment of Sputum-Smear Positive Pulmonary Tuberculosis With Inhaled Nitric Oxide," 2001-Abstract Form to the ATS 2001 San Francisco, - May 18-23, 2001 (faxed Mar. 27, 2001)

Examiner

Date Considered

Examiner: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance *and* not considered. Include copy of this form with next communication to applicant(s).



Form PTO-1449	Attorney Docket No. 24647-81051	Serial No. 09/762,152
LIST OF PATENTS AND PUBLICATIONS FOR APPLICANT(S)' INFORMATION DISCLOSURE STATEMENT	In re Patent of: Chris C. Miller	
(Use several sheets if necessary)	Filing Date: February 1, 2001	Group Art Unit: 1616

RECEIVED

DEC 08 2003

TECH CENTER 1600/2900

ADDITIONAL INFORMATION

Examiner Initials	Additional Information
	Counterdefendants' First Amended Response to Counterclaimants' Second Set of Interrogatories Relating to Counterclaims (Nos. 19-38) (Oct. 22, 2003); submitted in the case of INO Therapeutics, Inc. et al. v. SensorMedics Corporation et al, Civil Action No. 00-6033 (AET) in the United States District of New Jersey
	Pulmonox Medical Corporation Letter to Dr. Richard Long, dated Nov. 22, 1998

Examiner

Date Considered

Examiner: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance *and* not considered. Include copy of this form with next communication to applicant(s).